THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.12935 OF 2005

DISPOSED OF ON 26-09-2005.

BETWEEN:

Y.Suryanarayana …PETITIONERS

AND

N.T.R.UNIVERSITY OF HEALTH SCIENCES

VIJAYAWADA AND ANOTHER …RESPONDENTS

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.12935 OF 2005

ORDER:

1. N.T.R.University of Health Sciences-1st respondent issued a notification on 18.4.2005 calling for applications for admission into M.D. (Homoeo) courses for the academic year 2005-06. Entrance Test was held on 15.5.2005. The petitioner appeared in the entrance test with hall ticket No.4123 and secured 31st rank. He belongs to BC-D category of Andhra University area. The total number of seats available in M.D.(Homoeo) courses at Dr.JSPS Government Homoeo Medical College, Hyderabad are 18 and they are distributed as follows:

(1) Materia Medica 6 seats

(2) Repertory 6 seats

3. Homoeopathic Philosophy and Organon 6 seats

Of the six seats available in Homoeopathic Philosophy and Organon, one seat is reserved for foreign nationals who will be nominated by the Government of India as per the orders of the Government issued vide Lr.No.R.12013/1/2003-E&C(II), dated 23.3.2004. All the courses are state-wide courses. As per para 6 of the Presidential Order, admission to 85 % of the seats specified shall be reserved in favour of and allocated among the local candidates in relation to local area in respect of Andhra University including Nagarjuna University; the Osmania University including the Kakatiya University area; and S.V. University including the Sri Krishna Devarayana University area in the ratio of 42:36:22 respectively. One seat is allocated to Andhra University in the faculty of homoeopathic philosophy and organon under open category. The petitioner is the second highest rank holder among the eligible candidates from Andhra University local area under BC-A and BC-D categories. One candidate by name Karri Kasula Varma who is the highest rank holder among BC-A candidates from Andhra University Area has been selected to a seat in Homeopathic Philosophy and Organon under open category and thereafter slided to reserved seat in Materia Medica. Thereby one seat of Andhra area in the faculty of Homoeopathic Philosophy and Organon fell vacant. The petitioner being the second

highest rank holder amongst BC-A and BC-D candidates opted the seat in Philosophy and Organon. But, 1st respondent refused to allot the seat to him and instead preferred to allot the seat to 3rd respondent-B.Sarita who got 36th rank and who belongs to BC-A category. Hence, this writ petition seeking direction to 1st respondent to allot the seat in the faculty of Homeopathic Philosophy and Organon to the petitioner.

2. As per orders in WPMP.No.24614 of 2005 B.Sarita came to be impleaded as 3rd respondent in the writ petition. Respondents 4 to 8 also came to be impleaded as per the orders in WPMP.No.24710 of 2005.

3. Counter affidavit of respondents 1 and 2 in brief is :

After completion of Ist stage of selections, the following candidates found place in the provisional list.

1. MATERIA MEDICA:

AU AREA OC/SER-4, BC-A-10

OU AREA OC-1, OC-2

SVU AREA SC-33

UR BC-B-11

2. HOMOEOPATHIC PHILOSOPHY & ORGANON

AU AREA SC-41

OU AREA OC-3

SVU AREA BC-D-23

UR OC-5

3. REPERTORY

AU AREA SC-22, BC-B-30

OU AREA OC/SER-8, OC-9

SVU AREA BC-A-12

UR OC-6(NL)

The selection committee called the candidates rank-wise, collected the option forms and entered their option in the merit list and also announced the options through public address system. The selection committee made the selections basing on the merit, category and University area. At the end of first stage, two seats remained unfilled in Homoeopathic Philosophy and Organon (OC-Ser-1). 10th rank holder who belongs to BC-A/AU area selected under BC-A quota in Materia Medica is shifted to Homoeopathic Philosophy and Organon as OC and slided to Materia Medica under BC-A. The seat vacated by 10th rank holder under BC-A/AU in Philosophy and Organon is treated as OC/BC-A/AU. As one AU seat is available in Philosophy and Organon, the same is allotted to rank No.36/BC-A/AU. In Homoeopathic Philosophy and Organon, the seat reserved for BC candidate is allotted to 23rd rank holder, BC-D of SVU area who is more meritorious than the petitioner. For better understanding the relevant portion in the counter affidavit needs to be noted and it is thus:

> " At the end of the first stage, the following seats are unfilled in Homoeopathic Philosophy Organon:
>
> Category wise: OC/Ser-1
>
> Area wise: AU-1
>
> The following service candidates have attended the counseling.
>
> 1. 4-AU-OC/Service
> 2. 8-OU-OC/Service
> 3. 18-OU-OC/Service
>
> For rank Nos7/OC/NL; 13/BC/OU; 15/OC/SVU; 16/OC/OU; 17/OC/SVU who are non service candidates no seats are available under non service category.
>
> The first two service candidates were allotted seats in Materia Medica

and Repertory respectively as per their higher option. Hence, rank No.18/OC/Service from OU has to be allotted the OC/Service seat in Organon and Philosophy. But in Organon and Philosophy one AU seat is vacant. So the lower OU candidate in Organon and Philosophy with rank No.5 selected under OC/UR has to replaced by rank 18/OC/Ser/OU as the other lower rank candidates in Organon and Philosophy belongs to SVU or AU and selected under category also. The rank No.3/OU selected in OU quota is shifted to UR in place of rank 5 and Pthe seat vacated by 3 in OU allotted to rank 18/OC/Ser/OU.

So, now in Organon and Philosophy one OC seat and one AU seat vacant. As rank No.5 OC/OU is replaced, the lower OC/OU candidate with rank 9/OC/OU in repertory is replaced and that seat is allotted to rank No.5 under OC/OU.

In Homoeopathic Philosophy Organon, one OC seat and one AU seat is available. So the rank 10/BC-A/AU (Karri Kasula Varma) selected under BC-A quota in Materia Medica is shifted to Organon and Philosophy as OC and slided to Materia Medica under BC-A. The seat vacated by Rank No.10/BC-A/AU in Organon and Philosophy is treated as OC/BC-A/AU and as one AU seat is available in Organon and Philosophy, the seat is allotted to rank No.36/BC-A/AU."

4. The respondents 4 to 8 are the candidates who have been admitted to the course under different categories and they are not competitors for the seat, which the petitioner claims. Hence, their counter affidavit needs no reference.

5. The dispute in this writ petition is with regard to the seat which has been vacated by the 10th rank holder viz. Karri Kasula varma. The seat vacated by 10th rank holder in Philosophy and Organon is treated as OC/BC-A/AU and the same has been allotted to 3rd respondent who secured 36th rank in the entrance examination.

6. The learned counsel appearing for the petitioner submits that the candidates belonging to BC-A and BC-D categories put together have to compete the seat vacated by 10th rank holder. According to the learned counsel, since the seat vacated by the 10th rank holder is a common seat for both BC-A and BC-D categories, the petitioner being the second highest rank holder amongst BC-A and BC-D categories is entitled to be allotted that seat. Whereas it is the version of 1st respondent University that the 10th rank holder belongs to BC-A category and

therefore the seat vacated by him should go to that category only and in which case the allotment of seat to 3rd respondent by the 1st respondent-University cannot be found fault. In support of his submissions, reliance has been placed on the decisions of our High Court in NTR UNIVERSITY OF HEALTH SCIENCES, VIJAYAWADA V. Y.RAGHAVENDRA and KOGANTI JAYAKRISHNA AND ANOTHER V. STATE FO A.P.

8. The issue involved in this case is to whom the seat vacated by 10th rank holder-Karri Kasula Varma is to be allotted?

9. Before dwelling on the rival contentions of the parties, I deem it appropriate to refer the list of provisionally selected candidates for the year 2005-06 placed on record by the Standing Counsel appearing for 1st respondent-University, which reads as under:

NTR UNIVERSITY OF HEALTH SCIENCES, A.P., VIJAYAWADA

M.D.HOMOEO SELECTIONS 2005-06 – 8.6.2005

LIST OF PROVISIONALLY SELECTED CANDIDATES – COURSE WISE

S.NO. RANK HT.NO. NAME SEX AREA CATEGORY SERVICE ADMITTED CATEGORY

HOMOEOPATHIC PHILOSOPHY & ORGANON

1. 3 4133 VENKATA RAMANA F OU OC OC UR

2. 18 4003 B.ARUNA F OU OC SERVICE OC OU SERVICE

3. 23 4025 V.KARUNAKAR M SVU BC-D BC SVU

4. 36 4087 B.SARITHA F AU BC-A OC/BC-A AU

5. 41 4115 SUGUNA KUAMRI.P. F AU SC SC AU

MATERIA MEDICA

1. 1 4105 B.SRINIVAS M OU BC-B OC OU

2. 2 4074 T.RAVINDER REDDY M OU OC OC OU

3. 4 4112 OVSK.SUBRAMANYAM M AU OC SERVICE OC AU SERVICE

4. 10 4030 KARRI KASULA VARMA M AU BC-A OC/BC-A AU

5. 11 4015 HARIKRISHNA.CH M OU BC-B BC-B UR

6. 33 4016 M.HARINATH M SVU SC SC SVU

REPERTORY

1. 5 4042 P.MANJULA F OU OC OC OU

2. 6 4054 PAVAN KUMAR.C. M NL OC OC UR

3. 8 4091 P.SATYAVENI F OU OC SERVICE OC OU SERVICE

4. 12 4034 P.LAXMI DEVI F SVU BC-A BC-A SVU

5. 22 4057 K.M.PRAKASH RAJU M AU SC SC AU

6. 30 4130 P.VENKATANARAYANA M AU BC-B BC-B AU

The proposition of law as laid down by Supreme Court in RITESH R.SAH V. DR.Y.L.YAMUL AND OTHERS, STATE OF BIHAR V. M.NEETHI CHANDRARAJIV MITTAL V. MAHARISHI DAYANAND UNIVERSITY AND PREETI MITTAL V. GAGANJOT KAUR SAIRA'S is that when sliding rule is applied, a seat vacated by more meritorious candidate belonging to reserved category should only be given to a less meritorious candidate belonging to reserved category, as the former is given option of the college/course which normally would

have been gone to a less meritorious candidate if there is no rule/instruction permitting such sliding. The said principle has been reiterated by majority in a judgment of this court in KOGANTI JAYAKRISHNA AND ANOTHER V. STATE OF A.P.

10. It is stated in the counter affidavit of 1st respondent-University that 10th rank holder was selected under BC-A quota in Materia Medica has shifted to Homoeopathic Philosophy and Organon as O.C. and slided to Materia Medica under BC-A. Thus, the seat vacated by rank holder No.10 under BC-A/AU in Homoeopathic Philosophy and Organon is treated as OC-BC-A/AU and as one seat is available in Philosophy and Organon, the seat is allotted to rank holder No.36 under BC-A/AU category.

11. What is required to be seen is whether open seat vacated by the reserved candidate in Homoeopathic Philosophy and Organon is to be treated as reserved seat only for BC-A or for both BC-A and BC-D. A fact is required to be kept in mind that reserved seat opted by 10th rank holder is meant for both BC-A and BC-D categories. It means whoever is meritorious among BC-A and BC-D is entitled for allotment of that seat. When that seat is occupied by BC-A candidate on sliding principle, the open seat vacated by him is to be treated as reserved seat for both BC-A and BC-D category. Selection procedure has been prescribed in para 12 of the Prospectus and it is thus:

> " 12.1 Provisional Selection shall be made by the Selection Committee constituted by the University.
>
> 2. The selection committee shall provisionally select the candidates as per these regulations from amongst the candidates who passed the entrance test and as per merit list.
>
> 3. The candidates shall submit their option for subjects of his/her choice in order of priority to Selection Committee. The selection committee will select the candidates as per the Admissions Regulations and Government Rules from among the candidates who physically present themselves and submitted their options. The list of provisionally selected candidates will be displayed and the provisional selection intimations will be issued to the selected candidates. The selection will be made only from among the

candidates who physically present themselves when their hall ticket numbers are called out in order of merit.

4. Claims of the candidates will not be considered if they are absent when called at the time of selection. If a candidate on merit is absent for selection when he/she is called then next in the merit would be selected The candidates shall produce their original certificates to the selection committee for verification.

5. The candidates shall be called to appear before the Selection one after another and they shall not enter the selection committee room in groups. Any person who obstructs the proceedings of the Selection Committee or otherwise misbehaves or causes disturbance at the selection committee meeting will be liable for disciplinary action as may be taken by the University.

6. The Selection Committee shall have power to review the provisional selection in case of any errors, misrepresentation, fraud or glaring injustice. In all matters relating to selections and admissions, the decision of the selection committee shall be final and binding on the candidates and selections cannot be questioned after admissions are closed.

7. If a candidate after choosing the subject fails to pay fees or after paying the fees fails to submit the bond, his/her selection stands cancelled automatically. If a candidate is absent at the first selection, he/she will be considered for selection at the subsequent selection in the then available courses."

12. It is clear from the above that the selection committee has got power to review the selection process in case of any errors. The understanding of the selection committee that the open seat vacated by 10th rank holder who belongs to BC-A category because of his opting the reserved seat which is meant for both BC-A category and BC-D category is to be filled up only by BC-A candidate is incorrect since meritorious candidate among the reserved category initially selected to O.C. seat has slided to reserved seat meant for BC-A and BC-D category and the resultant seat vacated by him under OC category is to be kept open for both BC-A and BC-D categories and whoever meritorious among the two categories is entitled for allotment of that seat. In that view of the matter, the resultant vacant seat to the 4th respondent cannot be sustained and the same is liable to be set aside. It is for the selection committee to reconsider the claims of the eligible candidates from BC-A and BC-D categories with regard to one OC seat vacated by 10th rank holder and allot the same to the more meritorious candidate among them.

13. Accordingly, this writ petition is disposed of setting aside the allotment of seat in

Homoeopathic Philosophy and Organon to 4th respondent and directing the 1st respondent – University to treat the seat vacated by 10th rank holder as reserved seat under BC-A and BC-D categories and allot the same to the more meritorious candidates among the two categories. No order as to costs.

Dt: 26-09-2005. (B.Seshasayana Reddy,J)

Tnb

Cc two days.

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.12935 OF 2005

Dated: 26-09-2005.